

April 28, 2000

**NOTICE OF REVISED SCHEDULE FOR FILING INITIAL BRIEFS
(May 3, 2000)**

RE: In re Application of U S WEST, Inc. and Qwest Communications International, Inc.,
Docket No. UT-991358

TO PARTIES OF RECORD:

PLEASE TAKE NOTICE that on April 26, 2000, Commission Staff filed a Request for Continuance of Briefing Schedule combined with its Motion for Issuance of Bench Requests. The Request and Motion are based on asserted "new developments in the case that warrant an extension of the current briefing schedule." Considering that briefs are due to be filed today under the existing procedural schedule, the Commission called for responses to be filed by close of business on April 27, 2000.

Level 3 Communications, LLC supports an extension of the briefing schedule on the basis that a continuance "will allow Level 3 to continue settlement discussions with Qwest and U S WEST." Level 3's response does not address the Motion for Issuance of Bench Requests.

MetroNet Services Corporation takes no position on the Request for Continuance. MetroNet, however, asks that any Bench Requests issued in response to Staff's Motion be clear that agreements that relate only to retail contracts and services are excluded. MetroNet's interests are implicated in this regard because MetroNet currently purchases services from U S WEST "only under retail contracts and tariffs, without a discount."

McLeodUSA Telecommunications Services, Inc. takes no position on Staff's Request for Continuance, but opposes the Motion for Issuance of Bench Requests. McLeod argues its agreement with U S WEST "contains proprietary and sensitive business information" and that it is "critical that the information be kept confidential." McLeod says the agreement "resolves issues between the companies that are unrelated to the public interest determination before the Commission in this proceeding" and that its production "would not assist the Commission" to decide this proceeding. Finally, McLeod argues that requiring production of its agreement with U S WEST "without regard to its relationship to the issues raised in this proceeding, would discourage future negotiated agreements, contrary to the Commission's efforts to encourage settlement."

Advanced TelCom Group, Inc. and NEXTLINK Washington, Inc. filed a joint response in which they state that they “agree that the filing date of initial briefs should be postponed for one week, until May 5, 2000, and that settlement agreements resolving disputed issues in this proceeding should be filed with, or provided to, the Commission, but ATG and NEXTLINK otherwise oppose [S]taff’s Request and Motion.” ATG and NEXTLINK urge that there is an important distinction between agreements that “arise from business disputes that bear no relationship to the competitive concerns raised in this docket,” and those that either “would require amendment to their interconnection agreements with U S WEST,” or that might “resolve competitive issues related to the proposed merger.” ATG and NEXTLINK “object to any requirement that any party be required to file or otherwise provide to the Commission in this docket, any confidential settlement agreement that is not related to the proposed merger and does not seek or require any Commission action or approval.” These Intervenor state that to the extent they execute an agreement with U S WEST that implicates either their interconnection agreement with U S WEST, or merger related issues, they will file the agreement in the appropriate docket and seek Commission approval.

ATG and NEXTLINK state that ATG has reached an agreement in principle with U S WEST on issues arising from business disputes that do not relate to the merger, and that NEXTLINK continues to negotiate with respect to such issues. These Parties argue that “[a]ny requirement that parties file or provide the Commission with any and all settlement agreements, without regard to their relationship to the issues raised in this proceeding, would severely hamper the parties’ ability to finalize their current settlement agreements and would discourage future negotiated agreements, undermining the Commission’s consistent efforts to encourage settlement.”

Finally, ATG and NEXTLINK urge the Commission to not construe a Party’s decision to withdraw from this proceeding or otherwise take a neutral stance on the proposed merger “as an abandonment of the competitive issues they raised in this case.” ATG and NEXTLINK reiterate that “if a party is able to negotiate a resolution of issues it has raised in this proceeding, the agreement reflecting that resolution should be provided to the Commission, as Rhythms Links has done.” On the other hand, these Parties argue “[t]he Commission . . . should not require that parties file confidential settlement agreements resolving issues that are unrelated to the merger, even if those agreements also require the CLEC to withdraw from this proceeding.”

U S WEST and Qwest filed a joint response opposing much of the relief requested by Staff. These parties state they do not oppose Staff’s request to make certain recent agreements to which U S WEST and/or Qwest are signatories (*i.e.*, a Stipulation between Rhythms Links, Inc. and U S WEST Communications, Inc. dated April 20, 2000, and an Interim Line Sharing Agreement dated April 24, 2000, among U S WEST Communications, Inc. and various CLEC’s, some of whom are Intervenor in this docket) exhibits in this proceeding. U S WEST and Qwest also do not object to Staff’s request for a continuance of the schedule for initial briefs, if the requested continuance is limited to one week (*i.e.*, until May 5, 2000) and does not affect the date for reply briefs, now

set for May 12, 2000.

U S WEST and Qwest do oppose Staff's motion that asks the Commission to issue Bench Requests that would require U S WEST and Qwest to furnish for the record "each and every agreement the Joint Applicants have entered into with the CLEC Intervenors in this proceeding." These Parties argue that the agreements in recently has executed with various CLEC's "are not appropriately characterized as 'merger settlements' and should therefore not be placed on the record in the merger docket." They assert that the "broad variety of business issues" resolved by the recent agreements "have no nexus to the merger transaction." U S WEST and Qwest state that if the Commission requires them to produce these "highly confidential" documents that "will have a chilling effect on settlement discussions, and could disincen future settlement agreements."

U S WEST and Qwest contend the Commission should consider that the Minnesota Commission, earlier this week, rejected a request that "these same ancillary agreements, outside the merger docket, should be placed on the record for comment in the merger proceeding. In this connection, Staff filed a reply on April 27, 2000, asserting that the circumstances in the Minnesota case are distinguished from those present here in that the proposed Stipulation and Agreement pending before the Minnesota Commission includes merger conditions that comprehensively address competition-related issues," in contrast to the proposed Stipulation pending in Washington.

As a preliminary matter, the Commission determines that a continuance of the briefing schedule until Wednesday, May 3, 2000, is required. By that date, the Commission will determine whether a longer continuance is needed, whether to grant Staff's request that the certain agreements described above be made exhibits, and whether to grant Staff's Motion that certain other agreements be made part of the record via Bench Requests. In the meantime, if the Parties discuss and arrive at a mutually acceptable resolution of these matters, they should inform the Commission of their proposed resolution by contacting me via telephone (360-664-1164) or by e-mail at dmoss@wutc.wa.gov by 9:00 a.m. on Monday, May 1, 2000.

Sincerely,

DENNIS J. MOSS
Administrative Law Judge